



Making San Francisco Bay Better

July 16, 2013

Mark Sanders
16075 Skyline Boulevard
Woodside, California 94062

SUBJECT: Amendment No. Five to BCDC Permit No. 2002.002

Dear Mr. Sanders:

We are sending you this letter to clarify for the record the negotiations that have taken place over the past year and to explain our expectations regarding a path forward to permit compliance.

BCDC staff believed an agreement had been reached with you regarding the language of Amendment No. Five to BCDC Permit No. 2002.002 after BCDC staff met with you on May 23, 2013. Therefore, staff was very surprised and disappointed to learn from your letter of June 21, 2013 that you have decided not to sign and fulfill the amended permit to resolve the violations. Unfortunately, by doing so, you remain out of compliance with your permit and subject to an elevated enforcement action. As a result, this letter documents the negotiations that have taken place over the past year and explains staff's expectations regarding a path forward to permit compliance.

Background. On May 4, 2011, you were sent a "35-day letter" that includes a list of permit violations. Among other issues, the violations include commencing work without first obtaining the required plan review by the staff and failing to provide required public access. Since that time, BCDC's design review, enforcement, and permitting staff have devoted substantial resources to reach an amicable resolution of these issues because staff determined early on that it is a priority for the public access to be opened quickly.

BCDC staff issued the first iteration of Amendment No. Five on September 19, 2012 after a site visit with Brad McCrea, John Bowers, Ellen Miramontes and Adrienne Klein on March 8, 2012, and an ensuing lengthy negotiation with Ms. Klein and Ms. Miramontes in a series of four meetings with your representatives Kevin Stephens and his staff on March 9, March 28, April 25 and June 7, 2012, respectively. However, you failed to execute this permit within the required 10 days. On October 12, 2012, you informed us that you had created a list of "errors" with the permit and submitted that list. On October 19, 2012, more than one month after having been issued the permit, you responded in writing that you would not sign the permit. After the staff requested that you provide a comprehensive list of all of your proposed changes to the permit, you provided staff with a longer list of "problems" with the permit on October 28, 2012. Some of the changes that you requested rightfully resolved inconsistencies, incompatibilities and, in a few cases, inaccuracies within the permit. Several BCDC staff members met with you, your wife Maureen, and Mr. Stephens, during two more lengthy meetings on December 13, 2012 and January 16, 2013, to discuss your list of proposed changes. At both of those meetings, you stated that you understood that not every change you requested would be incorporated into a new draft of Amendment No. Five. BCDC staff sent you a new draft to review on May 20, 2013 after incorporating the majority of your proposed changes. Three days later, on May 23, 2013, you provided a second list of changes. BCDC staff met with you that day to discuss those changes, and, again, BCDC staff agreed to incorporate nearly all of your proposed changes.

Among the substantive amendments to the permit to which you agreed during the May 23, 2013 meeting was to open the majority of public access areas related to Phase 1B by September 30, 2013. BCDC staff agreed that the only issue on which agreement was not developed was the amount and type of public access associated with the marina's guest berth docks. The original permit issued on August 21, 2003, which was approved by the Commission and signed by you, requires that all marina docks be open to the public (Special Condition II.B.14). On May 23, 2013, BCDC staff agreed to administratively change this provision in Amendment No. Five to apply only to the guest berth docks, instead of all marina docks. However, BCDC staff explained to you that this public access requirement could not be entirely eliminated administratively with an amendment to your permit and that, if the permit is amended to entirely eliminate this public access requirement without any offer by you to provide comparable public access in its place, the amendment would constitute a material amendment to the permit and would require a hearing and vote by the Commission. After meeting with you on May 23rd, BCDC staff decided to postpone until October 10, 2013 the requirement that the guest berths be opened to the public to provide you with ample time to apply for a material amendment to remove the requirement. This decision was communicated to you in the amended permit and the cover letter sent with it on June 10, 2013.

Given that all parties appeared to negotiate in good faith toward a mutual agreement on May 23rd and beforehand, BCDC staff expected that you would sign the revised permit amendment. Indeed, all parties agreed during that meeting that BCDC staff would provide you with a final issued amendment for your signature instead of another draft for your review. The amendment was issued to you on June 10, 2013. Yet, you did not execute the permit within 10 days. Instead, you sent BCDC yet another letter, dated June 21, 2013, indicating that you refused to sign the permit and that you had created a third list of proposed changes to the permit. As of the date of this letter you have not provided a written list of changes.

BCDC staff believes that this most recent refusal by you to sign the permit is the latest in a series of delays designed solely to avoid complying with the public access obligations of the permit. This belief is supported by the fact that you have provided to BCDC staff four separate lists of proposed changes to the permit, and yet you have claimed on each occasion that the list is complete and comprehensive. Indeed, at the conclusion of the May 23rd meeting, all participants agreed that no further changes would be forthcoming, save the question of the public access on the guest berth docks. And, since that time, staff has accommodated your concerns about providing public access to the guest berth docks and has provided a procedure for you to request an amendment to the permit to remove that requirement. As BCDC staff has accepted all of your requested changes, there was every reason for BCDC staff to expect that you would sign the permit and execute its requirements. Now, because it seems apparent that you have not negotiated in good faith and that you are continuing to take advantage of BCDC staff's willingness to cooperate in order to continue to delay compliance, BCDC staff has no choice but to call an end to the negotiation.

Necessary Action. Your failure to execute Amendment No. Five to the BCDC permit means that you are still bound by the authorization and requirements of the previous permit amendment (Amendment No. Four), which was issued on May 23, 2011. As you remain out of compliance with that amended permit, BCDC staff highly recommends that you execute Amendment No. Five. Therefore:

1. If you do not provide a final list of proposed permit language changes in writing within TEN DAYS from the date of this letter, BCDC staff will assume that you do not want a permit amendment and will continue enforcement proceedings against you; or
2. If you do submit proposed changes within ten days, BCDC staff will incorporate them to the extent that it can be accomplished administratively. The amendment then will be reissued so that you may sign the permit. Failure to execute the permit within ten days of issuance will result in continued enforcement proceedings against you.

Enforcement Process. As we have explained to you numerous times, a permit amendment will bring you back into compliance with the obligations of BCDC Permit No. 2002.002.05 and stop the standardized fines that are accruing from continuing to accrue. However, in our previous meetings we have also explained, and you stated you understood, that Amendment No. Five would not alone end the enforcement process for this case. As we told you, the BCDC staff may not, through the amendment process, waive fines or responsibility for past permit violations. The amendment to your permit is merely a step in the enforcement process by which the current violations cease and standardized fines stop accruing. The next step in the enforcement process involves your right to appeal the fines that have accrued against you. The details of that process have been clearly communicated to you. Signing the permit simply puts you back into compliance with your permit obligations, after which the BCDC staff would be able to meet with you to resolve the past enforcement allegations.

If you should have any questions regarding the amended permit, please contact Erik Buehmann at 415-352-3645 or erikb@bcdcc.ca.gov. If you should have any questions regarding the enforcement process, please contact Adrienne Klein at 415-352-3609.

Sincerely,



BRAD McCREA
Regulatory Program Director

BM/EB/AK/ms